

DANIEL P. CASWELL 30(b)(6), Confidential
COOPER INDUSTRIES vs. CONTINENTAL CASUALTY

February 21, 2014
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<p style="text-align: right;">Page 45</p> <p>1 Q. Is she still with CNA?</p> <p>2 A. The last I knew, she was still with</p> <p>3 CNA.</p> <p>4 Q. And when I say "CNA," is she with</p> <p>5 Resolute or is she at CNA?</p> <p>6 A. I believe -- the last I knew, she was</p> <p>7 still at CNA, not with Resolute.</p> <p>8 Q. Do you know what the complex coverage</p> <p>9 issues she is referring to are?</p> <p>10 A. I do have some understanding of the</p> <p>11 coverage issues involved in this matter. And</p> <p>12 exactly what was in Ms. King's mind, I don't</p> <p>13 remember at this point.</p> <p>14 Q. Well, this is 2008. And apparently,</p> <p>15 there were some coverage issues as opposed to</p> <p>16 simply a question about the underlying claim</p> <p>17 that's being asked here.</p> <p>18 Let me ask a different question. Do</p> <p>19 you know to whom these copies were being sent?</p> <p>20 A. The progress note doesn't specifically</p> <p>21 say.</p> <p>22 MR. CAMERON: Can we go off the record for</p> <p>23 just a moment?</p> <p>24 MR. GINSBERG: Sure.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. Tell me what your understanding</p> <p>2 is because you mentioned you had a conversation</p> <p>3 with Mr. Fogle where you talked about '79 and '80</p> <p>4 policies.</p> <p>5 A. Right. That was what Mr. Fogle was</p> <p>6 mentioning, so his understanding was that '79 and</p> <p>7 '80 were open. There are a group of policies</p> <p>8 that I believe go from '71 through '75 that have</p> <p>9 retrospective premiums that have not been maxed</p> <p>10 out. And to the extent that there are claims and</p> <p>11 payments sought under those policies, the</p> <p>12 retrospective premiums would apply.</p> <p>13 Q. Okay. What about the '75 to '79</p> <p>14 policies?</p> <p>15 A. The '75 policy was a Fidelity &</p> <p>16 Casualty policy. And I'm not aware of any</p> <p>17 retrospective premium on that, although there may</p> <p>18 very well have been, given the nature of Cooper's</p> <p>19 program. I'm just not aware of it.</p> <p>20 The policies between '76 and '79, my</p> <p>21 understanding is that the retrospective premiums</p> <p>22 have been maxed out on those policies, and</p> <p>23 therefore, we no longer have retrospective</p> <p>24 premiums that would apply to claims.</p>
<p style="text-align: right;">Page 46</p> <p>1 (WHEREUPON, discussion was had</p> <p>2 off the record.)</p> <p>3 MR. CAMERON: Back on the record.</p> <p>4 Mr. Ginsberg, while we were off the</p> <p>5 record, I pointed out to you it was my</p> <p>6 understanding you have the privilege log. And I</p> <p>7 understand that there is some communications</p> <p>8 between your office and mine about supplementing</p> <p>9 it. And that's the status of it right now.</p> <p>10 MR. GINSBERG: All right. Thank you.</p> <p>11 BY MR. GINSBERG:</p> <p>12 Q. Mr. Caswell, you talked earlier about</p> <p>13 retrospective premiums, self-insured retentions,</p> <p>14 et cetera, in the CNA program. I want to explore</p> <p>15 that for just a minute.</p> <p>16 I received yesterday some documents</p> <p>17 from Mr. Cameron's office, but let me just start</p> <p>18 with a general question. Is it your</p> <p>19 understanding that the 1979 and 1980 policies</p> <p>20 still have open retros?</p> <p>21 A. That is my understanding.</p> <p>22 Q. And that the retros, any retro</p> <p>23 premiums for prior years are closed?</p> <p>24 A. That's not my understanding.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. How did you go about determining that</p> <p>2 the '71 to '75 retro premiums were not maxed out?</p> <p>3 A. I talked to people in the</p> <p>4 Retrospective Premium Department.</p> <p>5 Q. When did you do that?</p> <p>6 A. I don't remember exactly. Sometime</p> <p>7 within the last two years.</p> <p>8 Q. Who did you talk to?</p> <p>9 A. Dan Peterson.</p> <p>10 Q. And this is the Retrospective Premium</p> <p>11 Department at CNA, or at Resolute?</p> <p>12 A. At CNA.</p> <p>13 Q. Dan Peterson is his name?</p> <p>14 A. Correct.</p> <p>15 Q. And where is he located?</p> <p>16 A. At CNA in Chicago.</p> <p>17 Q. What information did you receive from</p> <p>18 Mr. Peterson?</p> <p>19 A. He told me that the retrospective</p> <p>20 premiums from 1971 to 1975 had been closed for</p> <p>21 administrative reasons, but there was no</p> <p>22 indication that they were maxed out, and that the</p> <p>23 Retrospective Premium Department's view of that</p> <p>24 is that those are subject to reopening and</p>

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<p style="text-align: right;">Page 69</p> <p>1 Can you tell from looking at Exhibit 1</p> <p>2 whether the first page, this "New Asbestos Claims</p> <p>3 Worksheet," relates to the claims that are below</p> <p>4 it in this document? I mean I'll represent that</p> <p>5 this was the way we received them from CNA. I'm</p> <p>6 just trying to make sure that the first page, in</p> <p>7 fact, relates to the subsequent pages. And the</p> <p>8 way I get there is because it refers to a claim</p> <p>9 in Indiana on the first page and refers to --</p> <p>10 A. Well, it refers to the McClure law</p> <p>11 firm.</p> <p>12 Q. Which shows up on the summons.</p> <p>13 A. Right. Even though they don't show up</p> <p>14 on some of the other documents. It looks to me</p> <p>15 like it could for those same reasons that you</p> <p>16 just stated, but that's about it. It doesn't</p> <p>17 have any other specific designation.</p> <p>18 Timing-wise, it would seem to</p> <p>19 correspond as well, the February, 2007, time</p> <p>20 period.</p> <p>21 Q. Well, what's interesting about this is</p> <p>22 it doesn't -- this asbestos claims worksheet</p> <p>23 doesn't identify the claimant, right?</p> <p>24 A. It doesn't list the claimant on it.</p>	<p style="text-align: right;">Page 71</p> <p>1 investigation and evaluation of Cooper's claims</p> <p>2 that are the subject of this litigation."</p> <p>3 Do you know what investigation CNA did</p> <p>4 of the underlying claims for which notice was</p> <p>5 provided to CNA?</p> <p>6 A. The claims that are the subject of</p> <p>7 this litigation, are you restricting that to only</p> <p>8 the claims that Cooper has apparently put forth</p> <p>9 in its complaint, or to the other related matters</p> <p>10 that are contained or potentially referenced in</p> <p>11 affirmative defenses and counterclaims?</p> <p>12 Q. For now, I'm only referencing Cooper's</p> <p>13 claims for insurance coverage for the asbestos</p> <p>14 claims against Cooper.</p> <p>15 A. Okay.</p> <p>16 Q. So I'm not talking about the</p> <p>17 affirmative defenses or counterclaims.</p> <p>18 A. Okay. My understanding of the Cooper</p> <p>19 asbestos claims is that CNA has had some</p> <p>20 conversations with Cooper over time, oftentimes</p> <p>21 in conjunction with other Cooper matters that</p> <p>22 were pending and more pressing, asking about the</p> <p>23 underlying Cooper asbestos matters. And I had</p> <p>24 some of those conversations myself with Mr. Fogle</p>
<p style="text-align: right;">Page 70</p> <p>1 And, of course, if it's accompanying documents</p> <p>2 just like it's contained here, then you have it.</p> <p>3 Q. All right. Okay. I gotcha. I just</p> <p>4 wanted to -- in your view of this document, the</p> <p>5 first page of Exhibit 1 relates to the following</p> <p>6 documents?</p> <p>7 A. I can't tell for sure, but that seems</p> <p>8 logical. And if that's the way it was contained</p> <p>9 in the file, I think that is logical.</p> <p>10 Q. It was the way it was produced to us.</p> <p>11 I just want to --</p> <p>12 A. Okay.</p> <p>13 Q. All right. Let me show you what we've</p> <p>14 marked as Exhibit 5 now which is the Notice of</p> <p>15 Deposition, 30(b)(6) deposition of CNA.</p> <p>16 Have you had a chance to review this?</p> <p>17 A. I have.</p> <p>18 Q. Have you seen it before?</p> <p>19 A. I have.</p> <p>20 Q. And just to be clear for the record,</p> <p>21 are you prepared to testify with respect to each</p> <p>22 of these topics on behalf of CNA?</p> <p>23 A. I am.</p> <p>24 Q. Topic 4 says, "Defendants'</p>	<p style="text-align: right;">Page 72</p> <p>1 more recently. And he actually did provide some</p> <p>2 spread sheet information, and I had some</p> <p>3 follow-up questions that he actually hadn't</p> <p>4 gotten back to me on before suit was filed.</p> <p>5 Q. So that was you that actually was</p> <p>6 having these conversations?</p> <p>7 A. I had some of the conversations.</p> <p>8 Others would have involved people like Dave</p> <p>9 Steiger or Amy King. Oftentimes, counsel was</p> <p>10 involved in those because as I said, they tended</p> <p>11 to arise in the context of other bigger matters</p> <p>12 where we were talking about Pneumo Abex, or we</p> <p>13 were talking about Cooper Cameron.</p> <p>14 Q. Did I ask you where Mr. Steiger is?</p> <p>15 Is he still employed by CNA?</p> <p>16 A. The last time I talked to Mr. Steiger,</p> <p>17 he was employed by CNA.</p> <p>18 Q. And that's not Resolute, but CNA</p> <p>19 itself?</p> <p>20 A. CNA itself.</p> <p>21 Q. Do you know what his position is?</p> <p>22 A. Not by title.</p> <p>23 Q. Do you know what he does?</p> <p>24 A. He's involved in claims. I think he's</p>

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<p style="text-align: right;">Page 85</p> <p>1 emails?</p> <p>2 A. I do.</p> <p>3 MR. GINSBERG: We would ask for those to be</p> <p>4 produced.</p> <p>5 MR. CAMERON: That's fine.</p> <p>6 BY MR. GINSBERG:</p> <p>7 Q. Do you recall -- I guess the emails</p> <p>8 would --</p> <p>9 A. They would give us some dates. I can</p> <p>10 give you a general time frame. When was the</p> <p>11 complaint filed? Was it March of 2013?</p> <p>12 Q. March 4, 2013.</p> <p>13 A. Okay. My recollection is we began</p> <p>14 talking about the Cooper asbestos matters</p> <p>15 sometime in the fall of 2012. And we had a</p> <p>16 couple of conversations with our last one being I</p> <p>17 believe in February of 2013, with another</p> <p>18 conversation scheduled for early March of 2013.</p> <p>19 And before that next meeting or telephone meeting</p> <p>20 took place, the complaint was filed.</p> <p>21 Q. Do you know how Mr. Fogle got to you</p> <p>22 to talk about these issues?</p> <p>23 A. Yes. I was talking to him about</p> <p>24 Crouse-Hinds.</p>	<p style="text-align: right;">Page 87</p> <p>1 said that -- I mean having settled with Mount</p> <p>2 McKinley and Gibraltar, and I think that was back</p> <p>3 in 2009, my understanding, based on information</p> <p>4 that I have seen in other Cooper accounts, is</p> <p>5 that Gibraltar actually was on the hook for a</p> <p>6 large share of Cooper's costs and were paying</p> <p>7 75 percent or 100 percent of those costs up until</p> <p>8 the time they did a buyout with Cooper.</p> <p>9 So Gibraltar did a buyout settlement</p> <p>10 with Cooper, paid money that was allocated to</p> <p>11 Cooper, to Gardner Denver, to Crouse-Hinds, maybe</p> <p>12 Cooper Cameron.</p> <p>13 And then based on what Mr. Fogle told</p> <p>14 me, I understood that he began talking to</p> <p>15 Travelers. And he had worked out a deal with</p> <p>16 Travelers, in relation to the Cooper asbestos</p> <p>17 matter, at which point he was now coming to talk</p> <p>18 to CNA.</p> <p>19 And so we talked about the coverage</p> <p>20 picture. We talked about retrospective</p> <p>21 premiums. We talked about allocation. We talked</p> <p>22 about the past cost claim and the proof that we</p> <p>23 would need for that. We talked about the other</p> <p>24 settlements, other arrangements that they had and</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. And did he raise it, Cooper asbestos,</p> <p>2 or did you raise Cooper asbestos?</p> <p>3 A. He raised it.</p> <p>4 Q. What did he say to you?</p> <p>5 A. He first raised it in the form of a</p> <p>6 letter which he emailed to me, copied me on. And</p> <p>7 in that letter, he said something to the effect</p> <p>8 that Cooper has been tendering claims. We have</p> <p>9 \$3.2 million in defense. We would like to talk</p> <p>10 to you about CNA participating in this in some</p> <p>11 way. Those weren't the words he used, but that</p> <p>12 was the content.</p> <p>13 Q. And did you respond to that letter?</p> <p>14 A. Yes. We talked.</p> <p>15 Q. You had a phone call with him. And</p> <p>16 what did you say to him in the phone call?</p> <p>17 A. I don't remember specifically.</p> <p>18 Q. All right. What did you say to him</p> <p>19 generally?</p> <p>20 A. We had a number of phone calls. And I</p> <p>21 can give you the gist of sort of the progress.</p> <p>22 And again, we had some emails where we exchanged</p> <p>23 information.</p> <p>24 And the basic concept was Mr. Fogle</p>	<p style="text-align: right;">Page 88</p> <p>1 the information we'd need there.</p> <p>2 And we had made some progress, just in</p> <p>3 terms of understanding how the coverage block</p> <p>4 worked and if you were apportioning it in a pro</p> <p>5 rata way, how you would do that.</p> <p>6 That was the discussion where</p> <p>7 Mr. Fogle said, Well, let's not include the '79</p> <p>8 to '81 period because of the retro issue, but</p> <p>9 instead, look at the '71 to '78 period. And here</p> <p>10 is how I would factor that into a pro rata</p> <p>11 allocation for CNA's share. And he had a number</p> <p>12 for that.</p> <p>13 Q. Do you remember what that number was?</p> <p>14 A. Not exactly, but it was in the 27, 28</p> <p>15 percent range.</p> <p>16 Q. And was that a past costs number,</p> <p>17 percentage of past costs and future costs?</p> <p>18 A. That was the contemplation I think</p> <p>19 when he put that number out there.</p> <p>20 Q. And what was your response to that?</p> <p>21 A. The number itself was rational</p> <p>22 mathematically, based on the coverage block,</p> <p>23 excluding the '79 to '81 coverage.</p> <p>24 However, I advised him that we also</p>

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<p style="text-align: right;">Page 89</p> <p>1 had retros on the earlier policies from '71 to</p> <p>2 '75 along with other things that I have</p> <p>3 mentioned that I had asked for. And that was the</p> <p>4 call right before suit was filed.</p> <p>5 Q. Mr. Caswell, just from an insurance</p> <p>6 standpoint, without regard to retrospective</p> <p>7 premiums that may or may not be owing under the</p> <p>8 policies, you would agree with me that that block</p> <p>9 of policies, '71 to '81, would, in the ordinary</p> <p>10 course, respond to asbestos claims alleging</p> <p>11 occurrences during that period, right?</p> <p>12 MR. CAMERON: Object to the form of the</p> <p>13 question.</p> <p>14 BY THE WITNESS:</p> <p>15 A. The concept of insurance in that time</p> <p>16 frame responding to asbestos claims is</p> <p>17 reasonable, but this is not your normal insurance</p> <p>18 program.</p> <p>19 BY MR. GINSBERG:</p> <p>20 Q. But I said aside from -- and I</p> <p>21 understand it's not normal because of the</p> <p>22 retrospective or self-insurance programs is what</p> <p>23 you're talking about, right?</p> <p>24 A. Right. Multiple features that are</p>	<p style="text-align: right;">Page 91</p> <p>1 I'm just trying to make sure we're on the same</p> <p>2 page, in two ways, it's a question of whether</p> <p>3 Cooper was asking for CNA to defend and that's by</p> <p>4 sending the notice letters. I think you said</p> <p>5 that before, you didn't think it was clear that</p> <p>6 Cooper was asking for defense.</p> <p>7 THE WITNESS: Could you read back that</p> <p>8 question, please?</p> <p>9 BY MR. GINSBERG:</p> <p>10 Q. It will probably be easier just to</p> <p>11 rephrase. I'm sorry. Let me try it again. I'm</p> <p>12 just trying to get to the nut of the issue that</p> <p>13 we have to deal with in this case.</p> <p>14 And I understand really your position</p> <p>15 to be that it was not clear to CNA that Cooper</p> <p>16 was asking CNA to defend these lawsuits.</p> <p>17 A. That is correct. And the nut of the</p> <p>18 issue is something that I'm happy to get to. In</p> <p>19 settlement discussions with Mr. Fogle when we're</p> <p>20 in litigation, we need to talk about all the</p> <p>21 different things that can come into play.</p> <p>22 Q. And so I want to continue to talk to</p> <p>23 you about all of the things that can come into</p> <p>24 play. And you have been, you know, very</p>
<p style="text-align: right;">Page 90</p> <p>1 self-insurance.</p> <p>2 Q. Right. I understand that. But</p> <p>3 otherwise, if you look at the paper itself, this</p> <p>4 isn't a fight about whether comprehensive general</p> <p>5 liability policies respond to asbestos claims in</p> <p>6 that time period. It has been happening for</p> <p>7 decades, right?</p> <p>8 A. It's not a fight about whether</p> <p>9 comprehensive general liability policies might</p> <p>10 have to respond to asbestos claims. You know</p> <p>11 that there are lots of qualifications on</p> <p>12 something like that. Obviously, if you're</p> <p>13 looking at an individual claim and the date of</p> <p>14 loss postdates the coverage, you don't respond,</p> <p>15 things like that.</p> <p>16 There are even some more extreme</p> <p>17 situations, but I don't have facts to say those</p> <p>18 extreme situations apply here about knowledge of</p> <p>19 asbestos and, you know, those are potential</p> <p>20 defenses, but I think we have raised as potential</p> <p>21 affirmative defenses. But in the general course,</p> <p>22 that's not what this fight is about.</p> <p>23 Q. Okay. I just want to get to that</p> <p>24 point. This is really a question -- to me, and</p>	<p style="text-align: right;">Page 92</p> <p>1 straightforward. I'm asking if there are any and</p> <p>2 if you have any information that supports these</p> <p>3 defenses. Let me go ahead and finish that</p> <p>4 process just so we --</p> <p>5 A. Okay.</p> <p>6 Q. I think we just completed the</p> <p>7 cooperation clause issue.</p> <p>8 The next one, the tenth defense, is</p> <p>9 really I think what we would call in the</p> <p>10 vernacular, a late notice defense. I think</p> <p>11 you've told me that you don't really have any</p> <p>12 information suggesting that Cooper's notice was</p> <p>13 late for any of these claims?</p> <p>14 A. Well, I don't have specific knowledge</p> <p>15 of a particular claim where notice was late. And</p> <p>16 we looked at one where I said that looks like it</p> <p>17 was reasonably timely.</p> <p>18 But I also don't have a complete list</p> <p>19 of claims and a complete list of the notice dates</p> <p>20 fleshed out in discovery to say did Cooper fail</p> <p>21 to give notice of a claim at all, or did it give</p> <p>22 notice after the plaintiff's deposition was</p> <p>23 already taken because it was an exigent case.</p> <p>24 Those are issues that could come into play on an</p>

